

Successes and Challenges with the FTA New Freedom Program: Guidance for the NYMTC Region

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1 – Executive Summary

The New Freedom program (Section 5317) is a new Federal Transit Administration (FTA) program established under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). The program is designed to improve transportation services for individuals with disabilities by providing them with alternatives to public transportation outside of what the Americans with Disabilities Act (ADA) of 1990 requires. The New Freedom Program is “intended to fill the gaps between human service and public transportation services previously available and to facilitate the integration of individuals with disabilities into the workforce and full participation in the community.”¹ The program is the result of the New Freedom Initiative, a comprehensive program passed by President George W. Bush that assists in this integration. A landmark decision in *Olmstead vs. L.C.*, which ultimately made segregation for persons with disabilities illegal, spurred the President’s actions.

Because this is a newly established federal grant program, much research lies ahead to determine the overall impact of the program. Before researchers can gauge long-term effects, they must identify key challenges associated with implementing the New Freedom program and approaches that can successfully mitigate these challenges.

After interviews with local and national stakeholders, the author of this paper determined that the New Freedom program is extremely flawed, with minimal funding causing most problems. As an example, the law requires a designated recipient to administer the program. Although 10 percent of funds are delegated for administrative purposes, many urbanized areas perceive New Freedom as nothing but increased paperwork for a small amount of funds, and as a result do not want to take on these added responsibilities.

Specifically, the New York region received only \$12,194,603 through 2009, or \$8.40 per disabled resident. This low funding rate was a major impediment to securing a local public agency to handle the grant solicitation and oversight process for the New York Metropolitan Transportation Council (NYMTC), New York City’s metropolitan planning organization. The New York metropolitan region has extensive demand response transportation programs both in its urban and suburban areas, but these systems are enormously expensive to expand and operate. In 2006, for example, New York City paratransit (Access-a-Ride) cost \$55.64 per trip to the agency.² Thus, \$12 million is a very small percentage of funds required for capital and operational intensive programs in mega-region where 12.7 percent of the population with a disability demands such services.³

Furthermore, New Freedom is a reimbursement program, requiring a funding match of 50 percent for capital projects and 20 percent for operational programs. This poses a challenge for non-profits and small organizations and, with an economic downturn, even larger agencies are strapped and unable to match the grant. Smaller organizations must also abide by the same rigorous and bureaucratic federal requirements as large agencies.

¹ United States Department of Transportation. Federal Transit Administration. FTA C 9045.1. May 1, 2007. Page I-5.

² National Transit Database (2006)

³ United States Census, American Community Survey

However, even with all the program's problems, its money must not go to waste. The New Freedom program does have positive elements – such as the coordinated plan, which creates a process where stakeholders can identify overlaps in service and find ways to collaborate. Along with two other federal programs that cater to disadvantaged populations, New Freedom's projects must stem from this plan. This, in effect, will stretch the dollar amount allocated to the region and better serve those individuals most in need.

The author identified a total of seven cities across the country that have had relative success with the New Freedom program and then interviewed representatives from each city to provide direction for NYMTC on how best to proceed with its next solicitation effort. Three overall themes, outreach/education, funding, and oversight surfaced from these conversations.

- **Outreach and Education**

- *Workshops*

In the next round of solicitations, NYMTC should require potential grantees to attend a workshop to remain eligible for funds. The MPO should also require potential grantees (after review) to present their project in front of a panel, which would have the opportunity to ask questions and get clarification on missing or incomplete sections of the application. This process would benefit smaller non-traditional sub-recipient non-profits the most, as most of them are not familiar with FTA grants.

- *Web Presence*

Although NYMTC is at the forefront in terms of broadcasting its workshops via its website, it needs to post all questions and their answers online. Most of the value from workshops is from the question and answer period. NYMTC should also consider branding the program and developing a website similar to the one that Washington, DC, created which could assist in marketing. If this option is not available, creating visually appealing documents would be a low-cost alternative.

- *Targeted Outreach*

The highest concentrations of individuals with disabilities in the region are located in the Bronx and Brooklyn, but NYMTC received no applications from organizations or agencies from either of these two counties. NYMTC should consider making a concerted outreach effort so that the populations with the highest need have the most opportunity to integrate into the community.

- *Application*

NYMTC needs to revamp its application to make it easier to complete, by rewording circular language and developing a checklist to help applicants be certain their application is complete. A revised application could help the selection committee rank applications more quickly, thus giving grantees more time to complete the application.

- **Funding Issues**

- *State Resources*

Washington State Department of Transportation (WSDOT) developed a consolidated grant program that allows organizations and agencies to apply for public transportation grants through their Transportation Partnership Package funding program. Through this program, applicants can be awarded state funds as a match for the New Freedom program. NYMTC should study and examine whether any program similar to this exists either within New York State or at the local level.

Additionally, NYMTC should look to the New York State Department of Transportation as a partner for vehicle purchases; they already administer the Section 5310 program, which provides capital funding for senior mobility. This partnership would allow non-profits or organizations with limited income to purchase vehicles more cheaply.

- *Pilot Projects*

NYMTC should consider using the New Freedom program to encourage innovative pilot projects that would not have been eligible for funding without federal programs such as this. If the project works and is successful among the public, agencies theoretically would have an incentive to continue its funding.

- *Match Sharing*

An innovative way to address program matching is to promote regional projects and the sharing of matches. For example, if one organization only utilizes a paratransit vehicle during the peak period, another could operate it during the mid-day or at night.

- *In-Kind Matches*

Another possibility for funding matches among smaller organizations is to use the value of staff time as a program match. NYMTC, which allows this, should promote it more heavily so that the program looks more attractive to small non-profits.

- **Oversight**

- NYMTC should consider soliciting for two years instead of one so that there is downtime to conduct oversight.

2 – Introduction

The New Freedom program (Section 5317), a new Federal Transit Administration (FTA) program established under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), is designed to improve transportation services for individuals with disabilities by providing them with alternatives to public transportation outside of what the Americans with Disabilities Act (ADA) of 1990 requires. The program stems from the New Freedom Initiative, which the *Olmstead v. L.C.* Supreme Court decision motivated.

The program was initially created in 2003 but was not enacted until the passage of SAFETEA-LU in 2005 with the transportation provision ratified for FY2006. According to the Federal Transit Administration (FTA) circular, the New Freedom Program is “intended to fill the gaps between human service and public transportation services previously available and to facilitate the integration of individuals with disabilities into the workforce and full participation in the community.”⁴

According to the American Community Survey of 2006, 15.1 percent (or 41 million) of the United States population aged 5 and older had some sort of disability in 2006. Despite the passing of ADA in 1990, a large segment of the population still suffers severe mobility challenges, and New Freedom is designed to assist many of these individuals. However, the program has limited awardable money – only \$339 million through 2009. Although this may seem like a large amount of funds, it only provides each eligible American with roughly \$8.17. Because ADA compliance (or beyond ADA in this instance) is so costly, these funds are unlikely to have any discernible impact.

Generally, even though the program intends to serve the most vulnerable individuals, the program is fundamentally flawed. There have been successes, but most have been moderate due to the complicated structure of the program. The purpose of this report is to outline common challenges with the New Freedom Program, both in New York and around the country, and use this information to provide guidance for how best to utilize the funds in the NYMTC region. Below is a history of the program:

2.1. *Americans with Disabilities Act*

The New Freedom Program is grounded very much in the Americans with Disabilities Act. As mentioned above, the Program was established to go “beyond ADA.” The Americans with Disabilities Act stems from the Civil Rights Era of the 1960s. The “influence of the civil rights era lies in the fact that many individuals with disabilities who later became active in the Disability Rights Movement were inspired by the struggle of African Americans for civil rights...”⁵

With the momentum of President Lyndon Johnson, the Civil Rights Act of 1964 was passed. The Civil Rights Act offers protection from discrimination based on sex, race, and religion. However, this Act did not offer protection for those persons with disabilities. Not until the

⁴ United States Department of Transportation. Federal Transit Administration. FTA C 9045.1. May 1, 2007. Page I-5.

⁵ “Historical Context of the American with Disabilities Act.” National Database of ADA Centers. <<http://www.dbtac.vcu.edu/whatsada-history.aspx>>. Accessed 7/14/08.

passing of Section 504 of the Rehabilitation Act of 1973 was disability linked to civil rights law. Section 504 prohibits discrimination against persons with disabilities by those who receive federal funds. The Act has no teeth with regard to what occurs in the private sector.

One of the first laws passed under the Act was the Education for all Handicapped Children Act (since renamed Individuals with Disabilities Education Act (IDEA)), or Public Law 94-142. This Act “made it clear that a major revision of national disability policy was taking place...”⁶

During the 1970s, disability activism began to gain momentum. Activism was so strong, in fact, that attempts to weaken Section 504 and PL 94-142 during the Reagan era were blocked as activism on the state and local level flourished. Other accomplishments during these years included an amendment to the Fair Housing Act, which brought protection for persons with disabilities.

The National Council on Disability, which recommended enacting a comprehensive law to give persons with disabilities more opportunities to contribute to society, introduced the first version of the Americans with Disabilities Act in 1988 after successful advocacy. The Task Force on Rights and Empowerment of Americans with Disabilities, led by Justin Dart, Jr., helped built support on a national level. After several amendments, the Senate passed the bill on September 7, 1989, followed by the House of Representatives on May 22, 1990. In July 1990, the bill passed both Houses by overwhelming majority, and President Bush signed it into law on July 26, 1990.

2.2. *ADA Terms*

Generally, ADA uses Titles II and VII of the Civil Rights Act of 1964 “for coverage and enforcement...” and the terms and concepts of Section 504 “...for what constitutes discrimination.”⁷

In Title 42, Section 12101 of the United States Code, Congress found that American society has tended to isolate and segregate those individuals with disabilities. Discrimination takes myriad forms, including transportation limitations and restrictions. The US Code states, “people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally.”

Title II of the ADA Act of 1990 says, “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in, or be denied the benefits of, a public entity’s services, programs, or activities.” This includes transportation, which is outlined in Title IV. For example, under ADA, all fixed-route transit providers must provide paratransit services to persons with disabilities. Other requirements include: ADA accessible vehicles, regular maintenance and upkeep of accessible equipment and facilities, and ensuring new and altered facilities and vehicles are accessible for persons with disabilities. ADA also requires employee training in the operation of equipment and educational materials in a variety of accessible formats. The U.S. Architectural and Transportation Barriers Compliance Board, or the Access Board, oversees and maintains the ADA

⁶ Ibid

⁷ Ibid

Accessibility Guidelines. The United States Department of Transportation implements these requirements while incorporating the ADA Accessibility Guidelines.

2.3. Olmstead vs. L.C.

Olmstead vs. LC, filed in 1995, presented a claim under ADA and served as the first major event in the development of the New Freedom Program. The case concerns Elaine Wilson and Lois Curtis who were institutionalized for a majority of their lives after being diagnosed with mental retardation and mental illness. In the years leading up to the claim, their treatment teams recognized that both women did not fit the requirements for involuntary confinement. However, the institutions refused to release them to community-based programs that offered services catering to their needs. The prosecution argued that the State of Georgia cannot hold a mentally or physically challenged individual in an institutionalized setting if community-based options or options that could integrate these individuals into the least restrictive environments possible are available. In other words, if there is a way for institutionalized persons with disabilities to enter the public, they should be allowed.

The Eleventh Circuit Board of Appeals ruled that the State of Georgia violated the Americans with Disabilities Act by not allowing these women to integrate into the community. The Court found that although the Health Care Financing Administration (HCFA) approved roughly 2,000 slots for home and community based care per state, Georgia only used about 700.⁸ The State then appealed to the United States Supreme Court to reverse that ruling.

The case, heard in April 1999, was ruled in the women's favor. The Court declared "unnecessary segregation to be unlawful discrimination, and ordered integration." The case was so significant in integrating the disabled community into society that it was viewed as a landmark comparable to *Brown v. Board of Education*.⁹

2.4. New Freedom Initiative

The New Freedom Initiative, enacted under President Bush in 2001, stems from Executive Order 13217 ("Community-Based Alternatives for Individuals with Disabilities"), motivated by the *Olmstead v. L.C.* Supreme Court decision. The goal of the New Freedom Initiative is to provide "enhanced support for assistive technology, improvements in transportation, expanded opportunities in education and home ownership, and other initiatives in addition to greater opportunity for work and integrated community living."¹⁰ The Executive Order authorized six federal agencies, coined the Interagency Council on Community Living, to reevaluate their policies, laws, and federal programs to see if they contradict the decision of the case. The order required agency heads to develop or modify policies to improve community-based opportunities for persons with disabilities.

⁸ Sara Rosenbaum, J.D. "Olmstead V L.C.: Implications for Older Persons with Mental and Physical Disabilities." The George Washington University. November 2000. http://assets.aarp.org/rgcenter/health/2000_21_disabilities.pdf. Accessed 12/12/07.

⁹ Ibid.

¹⁰ "Administration Announces Nationwide Effort to Remove Barriers to Community Living for People with Disabilities." United States Department of Health and Human Services. July 25, 2001 <<http://www.hhs.gov/news/press/2001pres/20010725.html>>. Accessed 12/12/07.

2.5. Other Programs Intended to Serve the Transportation-Disadvantaged Population

In February 2004, President Bush issued Executive Order 13300 on Human Service Transportation Coordination. The Executive Order, similar to the New Freedom Initiative, established the Interagency Transportation Coordinating Council on Access and Mobility. The purpose of this interagency effort was to study any overlapping federal programs and services and find the most cost-effective ways of serving the transportation disadvantaged. The order authorized agencies to develop policies and procedures on how best to improve these transportation services.

According to a June 2003 Government Accountability Office (GAO) report examining coordination efforts among programs that provide transportation services, 62 federal programs (providing nonemergency, nonmilitary surface transportation services) were identified – six of which were administered by the United States Department of Transportation (USDOT).¹¹ The agencies with the largest number of transportation services, in 2003, were the United States Department of Health and Human Services (23) and the United States Department of Labor (15). Most of the programs are human service-oriented and fund-limited transportation programs, such as access to health care and senior centers.

Although the GAO report highlights transportation programs identified by the Community Transportation Association of America (CTAA) “as being routinely used to provide transportation,”¹² with stable funding, the report they cite was updated in January, 2007 to include new SAFETEA-LU initiatives and changes to initiatives funded under previous legislation. The new report “derives from CTAA’s established funding guide, Building Mobility Partnerships: Opportunities for Federal Funding” and is a joint project between Easter Seals Project Action and CTAA. The mission of Easter Seals Project Action is to “...promote cooperation between the transportation industry and the disability community to increase mobility for people with disabilities under the ADA and beyond.”¹³ They provide technical resources for organizations to comply more easily with ADA.

The report identifies 11 federal USDOT programs under SAFETEA-LU that assist those with accessibility challenges. New Freedom is different from the other programs in that it provides funding for capital projects and operational services *beyond* ADA. However, the New Freedom Program overlaps with Section 5316 and Section 5310; all projects that are granted for all three programs must derive from a Coordinated Human Services plan (discussed in the next section).

The USDOT programs that could assist disadvantaged populations include:

Program	Description
Federal Aid Highway Program	Reimburses states (80 percent or more) for highway related projects. Some funding may also be used for transit projects. Two major sub-programs in the Federal Aid Highway Program are: the Surface Transportation Program (STP) and the Congestion Mitigation

¹¹ Government Accountability Office. *Transportation-Disadvantaged Populations – Some Coordination Efforts Among Programs Providing Transportation Services, but Obstacles Persist*. ONLINE. GPO Access. Available: <http://www.gao.gov/new.items/d03697.pdf>. [November 15, 2007]. Pg. 9.

¹² Ibid.

¹³ Easter Seals. *Who We Are*. 2007. Available: http://projectaction.easterseals.com/site/PageServer?pagename=ESPA_who_we_are&csLocation=wwa_. [November 15, 2007].

	and Air Quality Program (CMAQ). Easter SEALS recommends that organizations work to ensure that any improvement include access for the transportation disadvantaged.
Bus and Bus Facility Grants (Section 5309)	Provides capital funding for buses and service expansion as well as bus related facilities. ADA paratransit vehicles and facilities are eligible under this program.
Elderly Individuals and Individuals with Disabilities Grants (Section 5310)	Provides funding to assist older adults and persons with disabilities through capital disbursements, such as for ADA compliant vehicle purchases.
Human Service Transportation Coordination Program	This is a new program established under SAFETEA-LU. The program is designed to improve coordination for federal resources in human service transportation. Funding supports the Presidential Executive Order on Human Service Transportation Coordination as well as United We Ride. This program “also establishes requirements for local communities to coordinate human services transportation and eases matching requirements for certain FTA funding programs to facilitate coordination.” ¹⁴
Job Access and Reverse Commute Grants (Section 5316)	The Job Access/Reverse Commute Program is intended to provide transportation services for low-income individuals to access jobs and reverse commutes.
Metropolitan Transit Planning Grants	This program provides transportation planning funds for MPOs to develop long-range transportation plans as well as transportation improvement programs. Groups and individuals dedicated to improving the quality of transportation services can influence the direction of the MPO.
Other Than Urbanized Area Formula Program Grants (Section 5311)	Provides funds for public transportation projects for areas with 50,000 or fewer residents.
Over-the-Road Bus Accessibility Program	Provides funds for private over-the-road bus operators to finance capital and operating costs of complying with DOT’s over the road accessibility rule. Some examples of how these funds could be used include: wheelchair lifts, training in equipment, and boarding assistance.
United We Ride	Interagency in nature, this program supports coordination in human service delivery programs. Aside from grants, United We Ride “provides state and local agencies a transportation-coordination and planning self-assessment tool, technical assistance, and other resources supporting coordination.” ¹⁵
Urbanized Area Formula Grants (Section 5307)	Provides funding for transit in urbanized areas (50,000 or more residents). The federal share of capital costs is 80 percent but may approach 90 percent for equipment that complies with ADA regulation.

3 The New Freedom Program

The New Freedom Program comprises three key components: a coordinated plan, designated recipients, and program measures and oversight. Lack of funding dedicated to the program and its bureaucratic structure have influenced all three of these components.

¹⁴ “Building Mobility Partnerships for People with Disabilities: Opportunities for Federal Funding.” Easter Seals Project Action. January, 2007. Available < http://projectaction.easterseals.com/site/DocServer/building_mobility_partnerships_update.pdf?docID=38803>. November 15, 2007.

¹⁵ Ibid.

3.1. Eligible Projects

FTA New Freedom Program funds may help finance:

- New public transportation services and alternatives including the planning, operating, and start-up of these services. As long as a service is new and “beyond ADA,” it is eligible. Services must not have been operational on or before August 10, 2005, and must not have an identified funding source;
- New feeder services;
- The purchase and operation of accessible taxis, ridesharing and/or carpool/vanpool programs;
- Projects to improve the accessibility of existing transportation facilities, such as an elevator within the New York City Subway system; and
- Travel training.

The grants may fund transportation services such as enhanced paratransit that go beyond the requirements of ADA. Examples of these types of services include: Paratransit services going $\frac{3}{4}$ mile outside of a fixed route; extended hours; door-to-door service that traditionally only provides curb-to-curb; and the purchase of vehicles that surpass ADA requirements. Support services, such as administrative expenses for new voucher transportation programs and volunteer driver and aide programs can also be awarded funding.

3.2. Coordinated Plan

Selected New Freedom projects must be derived from a locally-produced Coordinated Public-Transit Human Services Transportation plan, meaning that applications must address an identified unmet need outlined in the plan. For example, in the Long Island Transportation Plan 2000, mobility service gaps were identified for the elderly and persons with disabilities:

- Poor/inadequate paratransit scheduling with limited capacity;
- A lack of training/educational programs to facilitate senior citizen use of fixed route public transportation; and
- Poor accessibility infrastructure (wheelchair lifts, tie-downs and kneeling buses).¹⁶

Identifying these gaps helps prevent the duplication of services and better utilizes funds. Projects supported by Elderly Individuals and Individuals with Disabilities program (Section 5310) and the Job Access and Reverse Commute Program (Section 5316) must also be included in the coordinated plan.

The New York Metropolitan Transportation Council (NYMTC), the Metropolitan Planning Organization (MPO) for New York City and five suburban New York counties, recently selected Nelson\Nygaard Consultants, Inc., to develop a coordinated plan for the area. An interim plan was adopted by the Program, Finance, and Administration Committee (PFAC), NYMTC’s administrative arm that assists in advancing the transportation projects under the guidance of the Regional Transportation Plan.

The plan maintains the New York region’s eligibility for JARC, Section 5310, and New Freedom funds. The plan does this by “laying a foundation for the development of a final

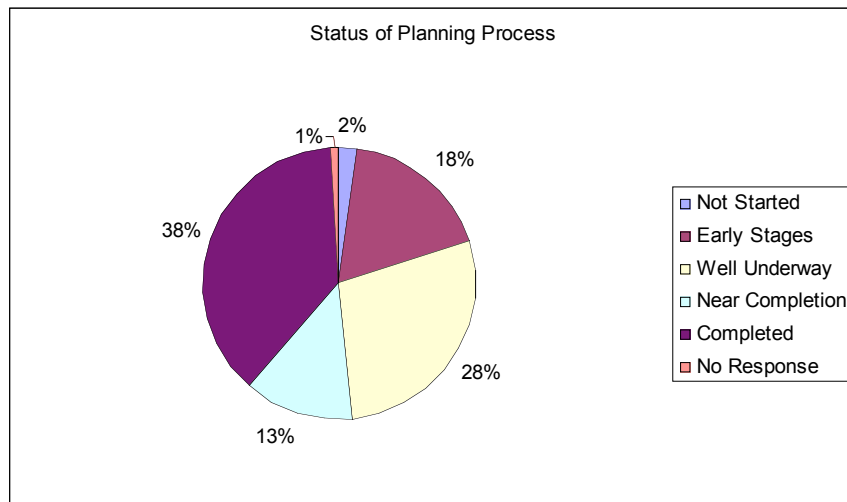
¹⁶ New York Metropolitan Transportation Council. “Access to Long Island Technical Study.” Pg 112.

Coordinated Human Services-Public Transit Plan...” which, will “recommend that individuals and organizations be solicited to serve on a regional committee that will provide a framework for providers, agencies and consumers to work together in assessing transportation needs and services through the collaborative process.”¹⁷

The required elements necessary in a coordinated plan are:

- An assessment of available services that identifies current transportation providers;
- A thorough identification of the transportation needs of individuals with low income, those with disabilities, as well as older adults. This assessment “can be based on the experiences and perceptions of the planning partners or on more sophisticated data collection efforts, and gaps in service”¹⁸;
- Ways to address these gaps in service; and
- Priorities for how to implement these strategies to address service gaps and the feasibility of each.

Most metropolitan areas had begun or completed their Coordinated Planning processes, as of January, 2008:



Source: FTA Presentation on JARC/NF given by James A. Goveia, Sr. at the Region 2 Conference

NYMTC was one of only 14 urbanized areas that had not started their Coordinated Plans in January, 2008. The planning process began in late May.

3.3. Designated Recipients

The designated recipient is responsible for:

- informing potential grantees of funding availability;
- developing the terms for project selection;
- determining applicant eligibility;
- conducting the competitive selection process;
- informing FTA of its annual program of projects and grant applications;
- making sure sub-recipients abide by federal requirements;

¹⁷ “New York Region Area-Wide Interim Coordinated Public Transit-Human Service Transportation Plan.”

¹⁸ United States Department of Transportation. Federal Transit Administration. FTA C 9045.1. May 1, 2007. Page V-2.

- documenting the procedures in a State Management or Program Management Plan;
- ensuring that fund allocation is fair and equitable; and
- ensuring that all projects stem from a Coordinated Public Transit-Human Services transportation plan that takes public, private and non-profit concerns into account.¹⁹

The FTA allocates 60 percent of total funds to designated recipients in large urban areas, 20 percent to the States for small urbanized areas and the last 20 percent to the States for rural areas and areas with fewer than 50,000 residents.

Designated recipients are responsible for administering the grant selection process along with the MPO and awarding these grants to sub-recipients. The projects awarded must be in line with the coordinated public transit-human services transportation plan. In addition, the designated recipient is not *required* to administer the selection process. It is, however, mandatory for the agency to provide oversight in the process.

In urbanized areas with populations of fewer than 200,000 and in rural areas, the State is the designated recipient for the New Freedom Program. The Chief Executive Officer of the State then delegates a State agency to be responsible for administering the program. Conversely, in urbanized areas with more than 200,000 residents, the FTA recommends that the designated recipient be in accordance with the Urbanized Area Formula (Section 5307), because a local transportation agency already “provides and coordinates transportation services for the region and is familiar with FTA’s program oversight requirements.”²⁰

In urban areas that cross state lines, the FTA suggests having one designated recipient for urbanized areas with populations over 200,000. This would help overcome bureaucratic hurdles and encourage coordination. For smaller multi-state urbanized areas, the Chief Executive Officer of each state must designate a state agency to handle the funds for their respective states. When this occurs, “the designated recipients must agree on how they split the single apportionment to the urbanized areas.”²¹

NYMTC as an organization cannot be the designated recipient for the New York region because it is not a legal entity. New York State Department of Transportation (NYSDOT) receives New Freedom funds for the metropolitan area. Sub-recipients awarded New Freedom funds will enter into a legal project agreement with NYSDOT.

3.4. Program Measures and Oversight

FTA has 23 requirements in its triennial review. This review process examines “grantee performance and adherence to current FTA requirements and policies.”²² FTA conducts a review at least once every 3 years to “evaluate formula grant management performance and grantee compliance with FTA and other federal government requirements.”²³

¹⁹ United States. Department of Transportation. Federal Transit Administration. New Freedom Program Guidance and Application Instructions. Washington: 2007. Pg. II-2

²⁰ United States. Department of Transportation. Federal Transit Administration. Pg. III-1.

²¹ United States. Department of Transportation. Federal Transit Administration. Pg. III-2.

²² United States Department of Transportation. “Triennial Reviews.” Available <<http://www.fta.dot.gov/FY2007/TriReview/00introduction.htm>> September 21, 2007.

²³ Government Accountability Office. “Transportation Disadvantaged: Progress in Implementing the New Freedom Program Has Been Limited, and Better Monitoring Procedures Would Help Ensure Program Funds Are Used as Intended.” GPO Access. Available: <http://www.gao.gov/new.items/d07999r.pdf>. [November 15, 2007].

The state management review program, on the other hand, “assesses the States’ implementation and management of the Elderly and Persons with Disabilities Program and the Non-Urbanized Area Formula Program to ensure they adhere to FTA requirements and meet program objectives.”²⁴ As such, New Freedom in the New York region does not qualify for this review.

According to a July 2007 GAO report on the New Freedom program, FTA has not included specific provisions for the New Freedom program in its triennial and state management reviews.²⁵ They recommend that the FTA develop and add “program-specific provisions” to the oversight process to assure that funds are being spent appropriately and that those utilizing the funds are accountable.

According to DOT officials, they have requested authority from the President’s fiscal year 2008 budget to use one percent of the New Freedom budget for oversight²⁶ in the form of spot reviews of designated recipients not covered under the triennial or state management review.

The FTA is also required under the Government Performance Results Act (GPRA) to complete performance reviews for its programs and “establish performance indicators to be used in measuring relative outputs, service levels, and outcomes.”²⁷

The three performance measures established for New Freedom include:

1. Service improvements (including increased coverage, service quality/time) as a result of New Freedom projects,
2. Alterations or additions to infrastructure - such as facilities and vehicles, and
3. Number of rides as a result of the New Freedom Program.²⁸

The American Public Transit Association (APTA) has an issue with the performance measures and evaluation of the New Freedom program. They argue that the current program performance measures is counterproductive; a service benefitting riders with disabilities may also serve those without disabilities. Curb cuts near bus stops are another example of an improvement that “may be virtually impossible to objectively measure as proposed, although of great value to the community.”²⁹ To develop methodologies that differentiate between persons with disabilities and riders would “be likely to be more costly than the service enhancement itself.”³⁰

²⁴ Federal Transit Administration. “State Management Oversight.” Available <http://www.fta.dot.gov/funding/oversight/grants_financing_98.html> September 21, 2007.

²⁵ Government Accountability Office. “Transportation Disadvantaged: Progress in Implementing the New Freedom Program Has Been Limited,” Pg 2.

²⁶ Government Accountability Office. “Transportation Disadvantaged: Progress in Implementing the New Freedom Program Has Been Limited,” Pg 3.

²⁷ Federal Transit Administration. “New Freedom Performance.” Available <http://www.fta.dot.gov/funding/grants/grants_financing_7188.html> Accessed July 15, 2008.

²⁸ United States Department of Transportation. “New Freedom Performance.” Available <http://www.fta.dot.gov/funding/grants/grants_financing_7188.html> November 30, 2007.

²⁹ William W. Millar. Federal Transit Administration Docket Number 2006-24037. American Public Transit Association. May 19, 2006. http://www.apta.com/government_affairs/safetea_lu/documents/apta_comments_coordinated_plans_elderly.pdf. Accessed 29 July 2008.

³⁰ Ibid.

Therefore, APTA suggests FTA develop a set of policies that are community-oriented – a program that measures New Freedom’s success with documented local priorities. The Government Performance and Results Act of 1993 allows leeway for FTA to establish criteria for judging a program’s success and not individual grants. Section 1115(b) of the act also allows FTA to describe a “minimally effective and successful program” without burdensome grantee reporting.³¹

3.5. Funding

The Federal New Freedom grants must be matched by a 20 percent local share for capital costs and a 50 percent share for operations costs. An “operations cost is something that does not have a useful life of more than one year.” In contrast, “a capital item is usually a tangible item that has a useful life of more than one year.”³²

Applicants to the New Freedom Program do not have to identify the source of their local match, but FTA grant representatives can ask for this information if necessary.³³ Revenue from human service transportation contracts can be used to reduce net project cost or as a match, but FTA program funds cannot be used as a local match.

States and designated recipients must select grants competitively. Eligible sub-recipients can be private non-profit organizations, state or local government authorities, and operators of public transportation services – public or privately operated.

Funding for the New Freedom program runs through 2009 with annual increases in funding. Like JARC, the New Freedom Program is formula based, allocated “on the ratio that the number of individuals with disabilities in each such area bears to the number of individuals with disabilities in all such areas.”³⁴

Below illustrates the total amount of funds for the program, by year:

2006	2007	2008	2009	Total
\$78 Million	\$81 Million	\$87.5 Million	\$92.5 Million	\$339 Million

4 Picture of the NYMTC Region

4.1 The Need for New Freedom

In New York State, 13.9 percent of individuals aged five and older, or 2,475,228 people, reported some sort of disability in the U.S. Census’ American Community Survey in 2006. The age group with the greatest number of disabled New Yorker’s was 65 and older, with 38.7 percent reporting some sort of disability. Furthermore, 32.9 percent of those disabled

³¹ Ibid

³² United States Department of Transportation. “Program Rollout: Questions and Answers. Elderly Individuals & Individuals with Disabilities (Section 5310) JARC & New Freedom Programs.” Available <http://www.fta.dot.gov/documents/FTA_Program_Rollout_QAs.doc> September 21, 2007.

³³ United States Department of Transportation. “Program Rollout.”

³⁴ United States. Department of Transportation. Federal Transit Administration. Pg. II-1.

between the ages of 16-64, the majority of which have a sensory or physical ailment, were employed. Many of these individuals require mobility services to get to work, and New Freedom funds would assist in catering to those needs. Proportionally, New York State had the highest number of disabled Americans in the Northeastern United States. Below is more specific demographic data on persons with disabilities in the NYMTC region:

	2006		
	Total Non-Inst. Pop.	Total Disabled	Disabled as % of Non-Inst. Pop
Bronx	1,224,296	209,355	17.1%
Brooklyn	2,302,511	322,352	14.0%
Manhattan	1,502,047	208,785	13.9%
Queens	2,089,691	250,763	12.0%
Staten Island	442,206	48,643	11.0%
New York City	7,560,751	1,013,682	13.4%
Putnam	94,445	10,956	11.6%
Rockland	270,218	22,428	8.3%
Westchester	873,835	86,510	9.9%
Lower Hudson Valley	1,238,498	119,893	9.6%
Nassau	1,235,816	128,525	10.4%
Suffolk	1,360,969	164,677	12.1%
Long Island	2,596,785	293,202	11.3%
NYMTC Region	11,396,034	1,452,992	12.7%
New York State	17,807,393	2,475,228	13.9%
United States	273,835,465	41,349,155	15.1%

Source: United States Census 2006 American Community Survey

4.2. New Freedom Funding

After negotiations with New Jersey and Connecticut, the NYMTC region received \$4,045,067 of New Freedom funds for FY2006. Any 2006 funds remained unobligated by September 30, 2008, would be lost to the NYMTC region and reapportioned among all areas nationwide. The NYMTC region will receive \$3,889,365 for FY2007 and \$4,260,171 for FY2008. Therefore, the total amount of funds allocated for the region under SAFETEA-LU will be \$12,194,603. Through this allocation federal New Freedom spending in the New York Tri-State area will be about \$8.40 per disabled resident over the course of three years.³⁵

4.3. Coordinated Human Services Planning Committee

NYMTC organizes and hosts a Coordinated Public Transit/Human Services planning committee which meets on a monthly basis to discuss and make recommendations to PFAC about issues related to the coordinated planning process, such as financial and consultant agreements and the implementation of federal regulations on ADA. The committee also provides assistance in the solicitation and selection of JARC/NF grants. The committee consists of area stakeholders and includes representatives from state and federal government as well as advocacy groups.

³⁵ NY-NJ-CT allocations (chart)

4.4. Current Demand Response Transportation Programs Offered in Region

The NYMTC region offers a variety of ADA eligible demand response services intended to serve individuals with disabilities and the elderly. Within the mass transit network, accessibility features are also available.

4.5 New York City

	MTA New York City Transit
Service Provided	Access-A-Ride
Number of Vehicles	1,096
Revenue Miles	34,773,966
Revenue Hours	2,913,775
Number of Trips	3,328,166
Fare (one way)	\$2.00
Cost to Agency per trip	\$55.64
Service availability	924 persons with disabilities per 1 paratransit vehicle

Source: National Transit Database (2006)

4.5.1. Accessible Stations/Buses

New York City is different from all other jurisdictions in the NYMTC region. The City’s dense urban fabric allows for a vast mass transit network consisting of subways and local and express buses. Nearly all of MTA New York City Transit’s 4700 buses are ADA compliant, meaning they are accessible to people who use wheelchairs. They also have a kneeling capability that lowers the front entrance of the bus close to the ground for customers unable to use the front steps. New York City Transit also has 76 accessible subway stations. All 76 stations are equipped with AutoGate – an automatic entry/exit gate that allows persons with disabilities to enter and exit the subway system. There are also a number of stations within the system where a rider can transfer to another train on the same platform without the need for an elevator or escalator.

Under President Roberts, New York City Transit implemented a website to inform customers of non-working elevators and escalators in the system. The organization also offers a recorded phone message for those customers unable to access the internet. The website and phone message, intended for those passengers wishing to plan their trip in advance, are updated three times daily. The system is not always accurate, however, because it relies on transit employees or customers to report breakdowns.³⁶

4.5.2. Access-a-Ride

Access-a-Ride is New York City’s demand response service. New York City Transit assumed responsibility for Access-a-Ride in 1993. Before this, the service was offered by New York City Department of Transportation. Unlike Long Island Bus, New York City Transit contracts out its paratransit service with fourteen private carriers who provide transportation, maintenance, and administrative functions. For example, one of the carriers, First Transit Inc., handles reservations, scheduling, and transit control through their call

³⁶ William Neuman. “MTA Rapid Response Plan for Elevators and Escalators. New York Times. <http://www.nytimes.com/2007/12/17/nyregion/17elevators.html?ref=nyregion>. Accessed 29 July 2008.

center. In 2006, the contractor answered over 4.4 million calls, with over 95 percent answered within 20 seconds.

These primary contract carriers are responsible for 94.1 percent of all completed trips in the City. In addition, seven black car and livery services (responsible for 4.6 percent of completed trips) are under contract with New York City Transit to provide transportation through a voucher system. There are also supplemental carriers, such as taxicabs and ambulettes, which are gaining in popularity. They are responsible for the remaining 1.3 percent of completed trips. Passengers who use the latter services have to front the cost and are reimbursed by the agency. In 2005, New York City Transit processed 26,000 reimbursement requests. As of 2008, only 26 taxis out of a total of about 13,000 are accessible for the disabled. Mayor Bloomberg's PlaNYC's initiative requires all taxis to be hybrid, and the required equipment change may make increasing the number of accessible cabs possible.

For those passengers wishing to extend their trip into Nassau County, Westchester County, or New Jersey, there are transfer points to Able-Ride, Bee-Line, and Able-Link paratransit services, respectively. For cross-jurisdictional transfers, the passenger must be a registered customer of both services.

Access-a-Ride service has had considerable growth since 1998. The growth is due in part to a 1998 interpretation by the Federal Transit Administration that "ADA paratransit regulations require paratransit service to be of sufficient capacity to meet all demand."³⁷ That year (as of July), there were 36,085 registrants with 279 vehicles in service. By 2010, experts expect that Access-A-Ride will have 127,218 registrants and 2,501 vehicles. Because of this growth, the annual cost of the service will increase to \$430.2 million over that time period. Also, by 2010 ridership is projected to increase to 6.8 million completed trips.

4.5.2.1. Challenges with Access-a-Ride

An initial challenge with Access-A-Ride was the MTA's hesitation to take over the service in 1993 because paratransit often produces high operational deficits. The administrative transfer was done pursuant with an agreement with New York City, which provides a steady stream of funding for paratransit.

MTA contracts out its paratransit service, which is common among major US cities. Although this approach is less expensive, there is considerable turnover of drivers and personnel. Being a driver is a very difficult and stressful job that requires people skills. Salaries also are not on par with regular bus drivers. This issue was highlighted in a strike in December, 2007, by contracted drivers at four companies who demanded raises and improved benefits. However, many drivers become paratransit drivers as a stepping stone to driving for MTA New York City Bus or MTA New York City Transit.

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³⁷ "New York City's Access-a-Ride Program: Costs and Funding Sources." City of New York's Independent Budget Office. February 6, 2002. <http://www.ibo.nyc.ny.us/iboreports/paratransit.pdf>. Accessed 12/12/07.

4.5.2.2. *Future Initiatives*

The growth and popularity of Access-a-Ride has brought with it future initiatives. Plans are underway to expand alternate service, such as black cars and taxicab services, which are cheaper for the agency. The agency is also exploring opportunities for a feeder service and finding ways to expand the subscription service. Access-a-ride would also like to better enforce the late cancellation and no-show policy. In addition, as mentioned above, New York City contributes to paratransit. New York City Transit would like to renegotiate the agreement to secure the City’s commitment as well as restructure the fare of the service.

4.6. *Long Island*

	Long Island Bus (Nassau County)	Huntington Area Rapid Transit (Suffolk County)	City of Long Beach (Suffolk County)	Suffolk County Transit (Suffolk County)
Service	Able Ride	HART ADA	Long Beach Transit	Suffolk County Transit
Service Provided	Curb-to-Curb	Curb-to-Curb	Curb-to-Curb	Curb-to-Curb
Number of Vehicles	84	9	2	63
Revenue Miles	3,307,849	80,994	47,085	3,385,183
Revenue Hours	216,932	6,648	8,447	181,002
Number of Trips	352,589	16,325	15,330	254,571
Fare (one way)	\$3.50	\$1.25	\$3.50	\$3.00
Cost to Agency per trip	\$33.85	\$52.47	\$17.39	\$39.71
Service Availability	1530 persons with disabilities per 1 paratransit vehicle	1823 persons with disabilities per 1 paratransit vehicle	3586* persons with disabilities per 1 paratransit vehicle	2613 persons with disabilities per 1 paratransit vehicle

Source: National Transit Database (2006) HART data from 2005

*: 2000 Census

Twenty stations on the Long Island Railroad (LIRR) comply with ADA requirements. Other stations, however, are accessible by wheelchair via a ramp. Like New York City Transit, the LIRR displays the status of their elevators on a website. Aside from the City Zone, the Port Washington Branch is the most accessible, with 55 percent of the stations having elevators and/or escalators.

4.6.1. *Nassau County*

Long Island Bus (LIB) offers wheelchair accessible buses on all of its routes, providing wheelchair lifts and kneeling ability. Like New York City Transit, Long Island Bus also offers a reduced fare for persons with disabilities.

Nassau County is unique in its transit operation due to Long Island Bus (LIB) being a subsidiary of the Metropolitan Transportation Association. Nassau County government also serves as the designated recipient for any grant awarded to Long Island Bus. Regular funding comes from both the MTA and Nassau County and unlike New York City Transit, LIB operates its own paratransit service called Able-Ride. Able-Ride currently operates a total of 86 vehicles and has 34,813 registrants. In 2007, Able-Ride transported 352,160 passengers.³⁸ The service costs passengers \$3.50 a ride which is little in comparison to the roughly \$34.00 LIB spends in operation costs per ride.

³⁸ Long Island Bus. Interview. 8 November 2007.

Demand for the service is increasing, which poses a challenge to the agency. Other challenges include being in suburban residential areas with residents who have a negative perception of mass transit and oppose any operator, including Able-Ride. An Accessible Transportation Oversight Committee meets quarterly to discuss these challenges, and officials at the agency contend that the Committee has addressed them extremely effectively.

4.6.2. Suffolk County

Suffolk County Accessible Transportation (SCAT) service has been operating in Suffolk County since 1994. SCAT provides transportation services by reservation to those unable to use the Suffolk County Transit system. SCAT’s service is curb-to-curb and will pick up and drop off anywhere in Suffolk County within 3/4 mile of a Suffolk County Transit or Huntington Area Rapid Transit (HART) bus route. The operator also has a subscription service for those riders taking the same trip at the same time at least 2 days a week.

4.7. Other NYMTC Suburban Counties

	Putnam County	Rockland County	Westchester County
Service	Putnam Area Rapid Transit	Transportation Resource Intra-County for Physically Handicapped and Senior Citizens (TRIPS)	Bee-Line
Service Provided	Curb-to-Curb	Curb-to-Curb	Curb-to-Curb
Number of Vehicles	4	21	52
Revenue Miles	120,040	558,655	2,069,520
Revenue Hours	7,231	33,035	129,944
Number of Trips	13,278	67,093	196,685
Fare (one way)	\$3.00	\$1.00	\$3.00
Cost to Agency per trip	\$34.08	\$32.10	\$42.93
Service Availability	2739 persons with disabilities per 1 paratransit vehicle	1068 persons with disabilities per 1 paratransit vehicle	1663 persons with disabilities per 1 paratransit vehicle

Source: National Transit Database (2006)

4.7.1. Westchester County

Bee-Line fixed route busses offer reduced-fare passes for persons with disabilities as well as wheelchair lift devices on almost all routes. Bee-Line also has a paratransit service which is operated by the Westchester County Office of the Disabled. Westchester also provides travel training through the Older Driver Assistance Program. Furthermore, the Transportation Subcommittee of the Westchester Council for the Disabled offers assistance with issues faced by the Paratransit service.

Unlike Long Island Railroad, many more of Metro-North Railroad’s train stations are ADA compliant. Only one station on the New Haven Line (Harrison) does not comply. On the Hudson Line, 71 percent of the stations comply, and on the Harlem Line, 42 percent of the stations are ADA compliant.

4.7.2. *Rockland County*

Rockland County's paratransit service has had an 11.5 percent increase in ridership between 2005 and 2007.³⁹ With the transfer over to an Intelligent Transportation System (ITS) scheduling system, Rockland County can now handle calls and reservations more efficiently. Prior to the federally-funded ITS system, calls were handled long-hand, with employees manually scheduling rides. Passengers can now call up to two weeks in advance or as close as the same day to schedule a ride.

Rockland County has 25 buses of various sizes and 21 drivers. The largest bus can carry eleven passengers and two wheelchairs or fifteen passengers with no wheelchairs. The smallest bus, however, can carry six passengers with three wheelchairs, or fourteen with no wheelchairs.

Unlike New York City Transit's access-a-ride service, Rockland County does not administer the qualification process. Eligible passengers (Over 60 years old or having a disability) must go through eight certifying agencies to qualify for the paratransit service. Rockland County does not receive any of the medical information, just a release form stating whether or not the passenger qualifies.

Transportation Resources Intra-County for Physically Handicapped and Senior Citizens (TRIPS) operates with state operating funding, farebox recovery funds, and MTA discretionary money. No county funding is used; thus, the federal taxpayer does not contribute. Capital projects are financed using federal dollars.

4.7.3. *Putnam County*

As the most rural county in the region, Putnam County has by far the smallest paratransit service in the region. Putnam County's transit service is called "Putnam Area Rapid Transit" (PART), which also provides persons with disabilities curb-to-curb transportation options $\frac{3}{4}$ -mile from a PART fixed route. The service operates between 9am-5pm, Monday-Friday and is \$3.00 a ride. Similarly to other paratransit providers, passengers must partake in a certification process which confirms that the rider qualifies.

4.8. *Human Service Providers*

A report by NYMTC in April 2007 examining Access to Transportation on Long Island identified over two dozen demand response transportation providers. Senior centers or town/village departments of human services offer the majority of these services. These transport operators are limited in their scope and only carry passengers within municipal borders usually on weekdays. In addition, many of the rides are limited to medical appointments, shopping or recreational trips. Volunteer organizations also exist, but are not nearly as effective.

The Interim Coordinated Human Services Public Transit Plan lists the NYMTC region's Section 5310 agencies that have been awarded vehicles. Although they serve the elderly, they also cater to persons with disabilities. These agencies operate a combined 404 vehicles.

³⁹ Rockland County. Interview. 8 February 2008.

5 Implementation Challenges and Concerns

The low number of grants awarded in Fiscal-Year 2007 (49) indicates that the majority of the country is experiencing challenges implementing the New Freedom program.

As of September 30, 2007, only 12 out of a possible 151 large urbanized areas have been awarded New Freedom grants. New Freedom awards were made to designated or direct recipients in: Oxnard, CA; San Diego, CA; Hartford, New Haven and Bridgeport, CT; Denver, CO; Orlando, FL; Chicago, IL; Shreveport, LA; Santa Fe, NM; and Portland, OR. The dollar amount awarded as of September was \$9,709,236, or slightly over 6 percent of total funds available for fiscal years 2006 and 2007. Of the \$9.7 million, \$7,525,630 was awarded for capital or operating expenses while \$2,183,696 was awarded for administrative expenses.

5.1. Broad New Freedom Implementation Concerns

Because the New Freedom Program is so new, few documents on the program or its implementation exist. However the Governmental Accountability Office produced one document for the New Freedom Program in July, 2007. The GAO delivered the study to House Representative John W. Olver, who chairs the Subcommittee on Transportation, Housing and Urban Development, and Related Agencies in the House. GAO officials, in a discussion regarding their report, were quick to note that many implementation issues outlined are unique to fiscal year 2006, because the allocation of fiscal year 2007 funds requires a coordinated plan.

The GAO, through their review of legislation and interviews, highlighted many concerns faced by those at the state and local level. Local entities were concerned that the program match requirements could potentially impact project selection, since some organizations may not have the capacity either to match the grant themselves or to obtain funding from an outside source – such as the state. The GAO report suggests other possible sources for a match, such as funds provided for different services (such as Medicare), but because these programs lack resources already, diverting funds from these programs toward New Freedom projects is unlikely.

A lack of funding for the project as a whole was an issue noted by all state and local governments the GAO interviewed for their report. With limited money allocated toward the New Freedom program, local entities were concerned that they would be unable to fund ambitious projects. Some of those same governments identified creative ways to utilize the funding as efficiently as possible, including: combining funding from FY2006 and FY2007; using the 10 percent allocated for administrative purposes for projects; and combining JARC and New Freedom funding for one project (although separate grant applications are necessary).⁴⁰ Another GAO report on JARC, however, found that “the 10 percent of an area’s JARC apportionment available for administration, planning, and technical assistance would be sufficient for these activities.”⁴¹ Some argued that New Freedom Program

⁴⁰ Government Accountability Office. “Transportation Disadvantaged: Progress in Implementing the New Freedom Program Has Been Limited,” Pg 25.

⁴¹ Government Accountability Office. “Progress Made in Implementing Changes to the Job Access Program, but Evaluation and Oversight Processes Need Improvement.” Pg 33.

requirements would lead to accrual of higher costs. Others believed that the overall cost of coordinated plans exceeded available resources.

GAO officials concluded that the processes outlined for the New Freedom Program are fair and equitable because they allow solicitation from anyone. The coordinated plan ensures that all stakeholders are involved in the process, even if the New Freedom grant process is competitive. The FTA agreed with GAO's assessment of fairness, saying in an interview that the coordination process is fair and forces larger agencies to bring smaller players to the table. In addition, since the program is new, the FTA believes that establishing a coordinated plan prior to funding is smart and will ensure that program money is spent wisely.

The 23 requirements outlined by FTA also are problematic. Both large agencies and small non-profits with limited resources for any FTA grant must abide by the requirements. Thus, the program design creates an advantage—perhaps unfair—to those with political clout and large cash reserves. In an interview, an FTA official acknowledged that non-profits face difficulties resulting from the requirements. He said that designated recipients and non-profits could potentially create a system whereby non-profits do not have to report as regularly as larger agencies, perhaps even once a year.⁴² The GAO, in their interview, also recognized the difficulty of some organizations to comply with current requirements.⁴³

The FTA agreed that the lack of funds were an impediment to securing designated recipients. The FTA has facilitated a process whereby regions experiencing difficulties finding a designated recipient can establish an interim recipient until an agency will commit to the long-term role. NYMTC had done just that.

Thinking outside the box, human service and health agencies can also be the designated recipient, as the responsibility does not have to go to a transportation agency per se. The FTA is agnostic about who receives the funds or who takes on the role of designated recipient.

There also have been concerns with agencies threatening to return the money to the FTA due to their frustration with the design of the New Freedom program. The funds are extremely limited and many view the amount of money available as not worth the effort necessary to receive it. However, the FTA does not know of a city where all stakeholders have this view. They believe that the likelihood of returned funds is low because the flexibility in how the funds can be used is sufficient enough for agencies to find them useful. For example, New Freedom funds could potentially be used to pay the salary of a travel trainer.

5.2. Concerns with New Freedom from the NYMTC region

Many of the concerns in the NYMTC region echo those of the country as a whole. New York, however, has been slow to get the program underway.

⁴² David Schneider (Federal Transit Administration). Interview. 12 December 2007.

⁴³ Richard R Calhoon and Richard A Jorgenson (Government Accountability Office). Interview. 10 October 2007.

5.2.1 Designated Recipients

The NYMTC region had a difficult time securing a designated recipient. The general consensus is that no City agency and none of the suburban counties in the NYMTC region favor administering New Freedom. Agencies and local governments do not want to start sponsoring non-profit organizations nor to be accountable to the FTA should a grantee not comply, especially with only 10 percent of funds allocated toward administration.

As of May 2008, only 18 out of 152 urbanized areas were without a designated recipient. The NYMTC region was in that 12 percent. However, New York State Department of Transportation was declared the designated recipient in early May. Agencies in the region agreed that those already declared designated recipients for other FTA programs would be their own designated recipients for the New Freedom program and contract directly with the FTA. Sub-recipients without a relationship with FTA (most likely non-profits or municipalities) would contract with NYSDOT, who will act as the designated recipient. Regardless of who is the designated recipient, grantees will not be reimbursed until a contract is signed, which could take up to 6 months. The extra time necessary for reimbursement could be a big disadvantage for non-profits.

The American Public Transportation Association (APTA), in its guidance about JARC/New Freedom, does not favor multiple designated recipients. They believe having multiple designated recipients is counterproductive, “adding to the number of independent services rather than encouraging cooperation and coordination.”⁴⁴

5.2.2 Funding

If more money were on the table, NYMTC would have had an easier time securing a designated recipient. Some in the region feel that the New Freedom structure under SAFETEA-LU gives too much responsibility to local governments and complicates the process. Many in local government “couldn’t be bothered” creating more work to “marshal through a \$10,000-\$20,000 grant.”⁴⁵ Under TEA-21, the process was simpler because the funds were allocated by earmarks. APTA, however, commends the FTA for allowing local representatives to determine projects.

Another problem with the program is that services eligible for the New Freedom monies, such as paratransit services, are extremely expensive. A transit agency increasing or adding service would also be increasing overall operating expenses since New Freedom funding streams are limited to begin with. Additional costs from adding service would be higher than funds provided by New Freedom. In other words, adding service would be counterproductive.

5.2.3 Program Structure

The FTA had no opinion about the new structure under SAFETEA-LU because Congress designed the program. Although SAFETEA-LU does not expire until 2009, FTA is working on ways to structure the program more efficiently given these common complaints. For

⁴⁴ “Federal Transit Administration Docket Number 2006-24037.” American Public Transportation Association. November 6, 2006. www.apta.com/government_affairs/safetea_lu/documents/apta_comments_coordinated_plan_%20part_2.pdf. Accessed 29 July 2008.

⁴⁵ Francis X. Ryan (Long Island Bus), Denise Ramirez (Nassau County Department of Transportation). Interview. 8 November 2007.

example, although Section 5310 is its own program, an FTA official believed that the program is redundant and should be combined with the New Freedom program, because it generally serves the same demographic. The only difference is that 5310 funds are mainly used for vehicles or for contracting out services. Instead of multiple programs (JARC, NF, and 5310), FTA is working toward developing a consolidated grant that would allocate a certain percentage of funds for different transportation needs.⁴⁶ As of now, potential grantees have to complete three separate applications for the three programs.

One interviewee noted that New Freedom should be administered similarly to how the 5310 program operates – that is, administered by New York State. Under 5310, the state would develop a contract and obtain a much better price on vehicles since they have the expertise and scale necessary to undertake such an endeavor. However, this structure is unlikely to work for New Freedom since the State is not a transit provider. Local agencies are better equipped to administer transit systems.

5.2.4. “Beyond ADA”

The Able-ride, Bee-Line, and Access-a-Ride service already serve their entire jurisdictions and could potentially serve areas outside of their borders should New York State Governor David Paterson pass a law allowing paratransit to operate five miles into neighboring counties. These three services, which already go beyond ADA by serving the entire county, cannot use New Freedom money to subsidize this service since New Freedom requires a *new* service as a condition for an award. In other words, New Freedom effectively punishes those agencies already going beyond ADA.

According to statutory language for the New Freedom program, projects or services not operational on August 10, 2005 but included on the Transportation Improvement Program (TIP) or State Transportation Improvement Program (STIP) without a dedicated funding source are considered “new.” This language makes certain that these projects can be “reinstated if the coordinated planning process determines the service is needed.”⁴⁷

The “new and beyond ADA” condition also could negatively change the operation of a paratransit vehicle. For example, door-to-door service “sounds terrific, but how do you handle other customers in the vehicle unattended?”⁴⁸ Door-to-door service also is extremely time-consuming, potentially forcing passengers to remain on the bus longer than the maximum allotted time for a given agency.

A representative in the ADA compliance office at the Federal Transit Administration contended that a large percentage of service providers offer door-to-door service already. Pittsburgh, for example, goes even further and transports passengers up four or fewer steps into a door. The interviewee did not know of any situation where liability for door-to-door service was an issue. Door-to-door service is not necessarily more expensive, either. Although numbers are unavailable, door-to-door service may lower the no-show rate since many non-door-to-door passengers cannot hear the paratransit vehicle arriving. In addition,

⁴⁶ Federal Transit Administration. Interview. 12 December 2007.

⁴⁷ Docket Number FTA-2006-24037. Federal Transit Administration. <http://edocket.access.gpo.gov/2007/E7-5734.htm>. Accessed 29 July 2008.

⁴⁸ Federal Transit Administration. Interview. 12 December 2007.

door-to-door service could actually speed up the process, since the paratransit driver can help the disabled individual board the bus more quickly. Shortening loading times could assist in lowering costs.

Regardless, once a paratransit agency offers any “beyond” service, it can be difficult to end. Some local entities worried the services would have to be terminated or the agency would have to take on the financial burden of continuing “beyond” services if the New Freedom program ended under new legislation or New Freedom declined to award funds for a service in subsequent years. This worry may be unfounded because as long as the service remains a part of the coordinated plan, it may still be eligible for New Freedom funding. In other words, the program can remain as “new and beyond ADA.”

FTA, in an interview, said that a coordinated plan would highlight other gaps in service that do not require multiple-year funding, such as capital projects. For example, many wheelchair lifts on busses are operational up to a certain weight, but people using increasingly common heavy scooters are unable to gain access to the vehicle.

5.2.4.1. ADA Financing

Although the FTA will likely not change the structure of the program under SAFETEA-LU, a representative from New York City argued that New Freedom funds should not go toward “beyond ADA,” especially when there were no federal funds clearly earmarked for ADA to begin with. ADA funds should not have to come out of the general fund, but rather should come out of a steady stream of funds specifically for ADA.

Only 16 percent of New York City Subway stations are ADA accessible. In most cases, the costs of making subway stations ADA accessible strongly outweigh the benefits. Transit agencies are required to spend hundreds of millions of dollars adding elevators and escalators that serve only a limited number of passengers.

The federal government, although having good intentions to serve persons with disabilities, generally does not provide enough support to agencies funding these requirements. The federal government outlines financially burdensome requirements but does not provide adequate financing. Because paratransit is so expensive, the FTA is more focused on improving ways to get persons with disabilities on a cheaper, fixed-route service.

To illustrate the source of revenue for paratransit and the cost of the service, below is the budget for Access-a-Ride in 2000 (in millions of dollars):⁴⁹

Revenues	
Fares	\$2.5 (3%)
Urban Taxes	10.9 (13%)
New York City	11.9 (14%)
NYC Transit	59.9 (70%)
<i>Total</i>	\$85.2
Expenses	
Contracts with providers	\$69.2
Vehicle Purchases	4.2

⁴⁹ “New York City’s Access-a-Ride Program: Costs and Funding Sources.” City of New York’s Independent Budget Office. February 6, 2002. <http://www.ibo.nyc.ny.us/iboreports/paratransit.pdf>. Accessed 12 December 2007.

Other Operating Expenses	8.0
Administrative Expenses	3.8
<i>Total</i>	<i>\$85.2</i>

An agency need not receive public funding to be required to adhere to ADA requirements. The United States Department of Justice helps ensure overall compliance, while the United States Department of Transportation reviews transportation services and facilities. Because they lack direct oversight, many agencies and organizations can simply ignore ADA compliance. However, “oversight is not the primary risk here; the biggest liability in noncompliance is the potential for lawsuits by advocates for persons with disabilities.”⁵⁰

According to Statute 49 CFR Part 37, when transportation agencies make an alteration to an existing facility, they must be make facilities accessible to the “maximum extent feasible,” meaning that all possible changes are made. When an agency alters the primary function of a structure, however, the path to the altered area as well as certain other elements must be accessible unless the cost is disproportionate. The Department of Justice says that costs exceeding 20 percent would be disproportionate. Although “new,” renovations still cannot be funded under New Freedom.

6 Guidance for NYMTC

Interviews about New Freedom with numerous regions across the country found successes, although limited in scope. Although many cities have allocated their 2006 funds and are currently in the process of soliciting for 2007 and 2008, all of the cities interviewed agreed that the New Freedom program is flawed. Most regions across the country have made more progress than the NYMTC region. NYMTC has faced considerable challenges with the program, and now that the MPO has resolved the designated recipient issue (which took over a year), initiatives are on the table to make the process run smoother during the next round of solicitations and beyond. The purpose of this section is to provide case studies of other regions and how they have been implementing the program.

6.1. Outreach and Education

The NYMTC region has had problems with outreach and education. NYMTC held three workshops (at the NYMTC office, in Suffolk County, and in Westchester County) to inform the public about policies under JARC and New Freedom and to assist in the application process. While the workshops were useful in disseminating the guidelines of the programs, only a small number of prospective grantees attended, leading to a low number of applications, many of which were incomplete.

The Metropolitan Washington Council of Governments (MWCOG) approached educating the public by *requiring* potential grantees to attend a workshop to remain eligible for funds. Those unable to attend had to meet with the Coordinated Human Services representative at the MPO. MWCOG also developed in-house a website solely dedicated to the JARC/New Freedom program before the first solicitation to disseminate information and provide outreach. The website, both visually appealing and flush with information, has been a go-to

⁵⁰ “Overview of ADA Impact on Transit Systems.” Colorado Department of Transportation. http://www.dot.state.co.us/CommuterChoice/files/TRANDIR_ADA.pdf. Accessed 29 July 2008.

resource for grantees within the Washington, DC, region. The website has also assisted in branding the program.

In addition to the website, MWCOG developed an easy-to-complete application. NYMTC's application is difficult to complete and appears burdensome to non-profits and small agencies with little experience in completing grant applications. MWCOG's application, on the other hand, provides applicants with an easy-to-read section on eligibility and program guidelines as well as an application checklist that assures grantees that what they submit is complete. In the 2006 solicitation, NYMTC's application used intimidating FTA circular language. In DC an instruction page on *how* to complete the application is also packaged into the materials and the scoring rubric. Both of these documents were not included in the NYMTC application, which may have contributed to the small number of submitted applications.

The North Central Texas Council of Governments (NCTCOG) had similar attendance numbers as New York at their workshops during their first solicitation. During the first call for applications, NCTCOG published the solicitation in the Texas register and placed ads in the two major newspapers and smaller community newsletters. However, they learned that this was not effective, and decided to use the standard industrial classification method instead to reach out to individual businesses and organizations. In addition, NCTCOG not only posted the workshop presentation on their website, but also the questions that were posed. Although NYMTC posted the webcast, they should post all questions and their answers online. Most useful information from workshops is in the question and answer period. NCTCOG also posts all previous projects that have been awarded to give potential applicants a sense of the projects that could be awarded.

The Phoenix region (Maricopa County), already working on its 2009 solicitation, has taken a different approach for the upcoming call for projects. In addition to the application, Maricopa County will require potential grantees (after review) to present their project in front of a panel. The idea is that the panel will have the opportunity to ask questions and get clarification on missing or incomplete sections of the application. This would benefit smaller non-profits the most, as they are not as familiar with FTA grants as traditional sub-recipients.

6.2. Funding Issues

As mentioned, the small amount of funding available has caused problems. Large organizations that have the money available for the match do not see the worth in applying. On the other hand, the smaller organizations that could really use the funding do not have matching funds available.

The Seattle region has been fortunate to have a dedicated State DOT. The Washington State Department of Transportation (WSDOT) has made Coordinated Human Services such a high priority that it has developed a consolidated grant program. The program is funded by the 2005 Transportation Partnership package, which receives revenue from:⁵¹

⁵¹ "2005 Transportation Partnership Program." Washington State Department of Transportation. <http://www.wsdot.wa.gov/Projects/Funding/2005/>. Accessed 29 July 2008.

Funding Source	Amount of Funding
9.5 cents gas tax increase phased in over four years	\$5.5 billion
Vehicle Weight Fee on passenger cars	\$908 million
The light truck weight fee increase	\$436 million
Annual motor home fee of \$75	\$130 million

This program combines the applications for state and federal transportation grants (cutting down on bureaucracy), while allocating \$25 million in State resources to support paratransit and the special needs population. From 2007-2009, WSDOT allocated “\$5.5 million to non-profit providers of transportation services for the elderly and persons with disabilities. Through formula-based grants, WSDOT awarded another \$19.5 million to assist transit agencies with providing additional public transportation services for people with special transportation needs.”⁵² The amount of State funds awarded is significant; while federal grants for JARC/New Freedom/Section 5310 total roughly \$7.7 million through 2009, the State of Washington has allocated \$25 million. Although funding these programs is a priority, a representative at PSRC noted that oversight is not important to WSDOT.⁵³

Washington’s program is extremely ambitious and should be used as a model across the country for funding not only paratransit and special needs services, but transportation as a whole. Less costly solutions can be found by looking at Washington, DC, Dallas/Fort Worth and Phoenix.

In the Washington, D.C., region, MWCOG has addressed the issue of limited funding by encouraging pilot projects. MWCOG looks to fund projects that are not “business as usual” and generally seeks proposals for innovative projects that may have had trouble getting off the ground before. They believe innovative projects are a good use of limited funding, as they provide informative lessons learned. If a project is successful, other agencies or local governments could pick it up and fund it because it is popular with consumers. Furthermore, MWCOG encourages regional projects and the sharing of matches. MWCOG organizes topic-specific meetings and invites those interested to compile regional applications to meet matches. In other words, under this model organizations that are interested share the match and the grant.

NCTCOG does not require a local match in its applications. In fact, they allow for in-kind matches on a case-by-case basis. This is beneficial for non-profits, who can use staff time as an in-kind donation. Similarly to MWCOG, NCTCOG also encourages collaborative grants. For example, multiple grantees can share vehicles if they need them for only a portion of the day. One organization could use the vehicle in the morning whereas another could use it during the afternoon or evening.

Phoenix expressed their desire to contract with Arizona DOT to obtain vehicles for less money. Because Arizona DOT (like NYSDOT) administers Section 5310, pooling purchases

⁵² WSDOT Public Transportation Grants. Washington State Department of Transportation. <http://www.wsdot.wa.gov/transit/grants>. 29 July 2008.

⁵³ Interview with PSRC

of vehicles for non-profits or small organizations through them to get the best deal on vehicles makes sense.

Minneapolis/St. Paul also encourages the utilization of other governmental agencies. The MetroCouncil, which serves as the MPO for the region, tries to get smaller non-profits to partner with public agencies, as they generally have healthier funding outlooks for the future. In the long term, Minneapolis/St. Paul believes that it is better to fund with a government, because an organization is secure should they be unable to continue the service.

6.3. Oversight

One area that needs further examination is in performance management and oversight. Many designated recipients, like Washington DOT or Phoenix, have little infrastructure in the way of oversight. In Minneapolis/St. Paul, this has been an issue. The MetroCouncil is concerned that they will not have enough staff time to conduct oversight for the projects that were funded. They are stretched as it is, and do not believe that the 10 percent allocation is enough to administer the rigorous process. The way the program was designed allows for new sub-recipients during every solicitation, which forces designated recipients to educate these organizations on the FTA requirements. MetroCouncil’s solution to this is to conduct solicitations every two years (’06-’07 funds together and ’07-’08, etc). During the year where no awards are issued, Minneapolis/St. Paul will use the time to carry out the oversight.

Once the program matures, NYMTC (and NYSDOT) should consider reaching out to the agencies that have had success with the New Freedom program to provide insight into their processes. Minneapolis/St. Paul’s efforts, which have not yet begun, should be examined. Another benefit to soliciting every other year is that it raises the attractiveness of the program. Organizations could fund larger projects and the New Freedom program would “appear” to be a more lucrative grant program. This was also highlighted in the GAO report outlining New Freedom implementation concerns.

FTA currently is underway in improving this process, but areas in the country having success with oversight should be identified and examined to assist NYMTC and NYSDOT in better implementing the New Freedom program.

7 Conclusion

Although NYMTC has had serious challenges with the New Freedom program and took longer than most regions in the country to get it underway, NYMTC and NYSDOT were able to successfully solicit enough applications to grant all of the funding for 2006. The following table outlines the projects that will receive 2006 New Freedom funds in the NYMTC region:

Program Name	County	Program Description	Funding
Equal Access and Mobility for All	Suffolk	This project will hire a mobility manager who will assist in improving options for persons with disabilities in western Suffolk County.	\$176,000
Mobile Data Terminals	Westchester	This project will improve	\$800,000

		the on-time performance of paratransit services through the installation of mobile data terminals.	
LIRR Station Improvements	Nassau/Suffolk/Queens	This project will provide new ADA accessible enhancements at 11 LIRR stations	\$3,069,067
Total Funding			\$4,045,067

Although NYMTC’s allocation of all the 2006 funds is an accomplishment under the circumstances, issues and bureaucratic hurdles still exist. First off, not all counties were represented, especially those with the highest concentration of disadvantaged populations (the Bronx and Brooklyn). During the next solicitation effort, NYMTC should make a push in communities with high concentrations of persons with disabilities.

7.1. Better under JARC?

Many representatives that were interviewed for this paper argue that the JARC program was better structured under TEA-21, or the last legislation. A Governmental Accountability Office (GAO) Report to Congressional Committees in November, 2006, outlined the FTA’s progress on implementing SAFETEA-LU changes to the JARC program. The biggest difference between SAFETEA-LU and JARC is how funds are distributed. Funding allocations under TEA-21 were either competitively selected by FTA or congressionally earmarked, but under SAFETEA-LU a formula was designed to distribute funds similarly to New Freedom.

In reality however, according to the GAO report, funds were congressionally earmarked. Regardless, the change to a formula based program “...is significant because some states and large urbanized areas...receive substantially more funds than under the discretionary program, while others...receive substantially less.”⁵⁴ Those with higher concentrations of disadvantaged populations receive more under SAFETEA-LU, making the program much more equitable. Program matching requirements also changed. Under TEA-21, program grants could not exceed 50 percent of the total cost of the project and could be used for either capital or operating projects. Some regions received less under SAFETEA-LU while others received more. One other aspect that is different under the new legislation that is extremely important is the development of a Coordinated Plan. Because of this important condition, the program is much better under SAFETEA-LU.

7.2. Advantages of New Freedom

David Snyder, a MWCOG Transportation Planning Board member, said of the JARC and the New Freedom program, “the real value here is less in the money chase and new projects...instead the real benefit is making the best use out of existing resources and programs.”⁵⁵ This rings true in the New York City metropolitan area. The JARC/New Freedom programs, although providing New York with only \$11 million in 2006, required

⁵⁴ Government Accountability Office. “Progress Made in Implementing Changes to the Job Access Program, but Evaluation and Oversight Processes Need Improvement.” GPO Access. Available: <http://www.gao.gov/new.items/d0743.pdf> [November 15, 2007]. Pg. 10.

⁵⁵ “Overview of Human Service Transportation Coordination.” Presentation. Metropolitan Washington Council of Governments. <http://www.mwcog.org/uploads/committee-documents/vFhdXIY20061005160025.pdf>. Accessed 29 July 2008.

NYMTC to conduct a public transit-human services coordinated plan, which will identify linkages and possible connections in service – whether physical, informational, or service change. Once the plan is complete, the \$11 million in funds will be able to stretch further and assist persons with disabilities or of low-income that were excluded when ADA was passed in 1991. Once these weak links are identified, the decision could be made as how to best utilize the money. For example, as outlined in Section 4, paratransit is costly. A coordinated plan would find ways to use the funds to link up paratransit and human service organizations to provide service. Many paratransit vehicles are under-utilized and coordination is lacking.

JARC and New Freedom are still in their infancy and will take time to grow and involve into successful grant programs like Section 5310. Analyzing the cities interviewed for this paper, many have already applied lessons learned to new rounds of solicitations. The NYMTC region is no different, and with guidance from other cities across the nation, this program could be implemented as successfully as Washington, DC's, or Phoenix's. The money is slim, and as seen in Section 4, ADA compliance is very expensive. But, agencies would be remiss to throw away *any* money allocated toward disadvantaged populations.

NYMTC should use the best practices in outreach and funding outlined in Section 6 as guidance to improve the program's timeline. The better educated the public is on these grant programs, the better the applications will be and the quicker the process of project implementation could begin. The better small organizations and non-profits are at finding program matches, the more diversified and higher quality the projects will be.